

Under Secretary of Commerce for IP & Director of the USPTO David Kappos

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“The America Invents Act: A Patent Law Game-Changer”

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- Good afternoon everybody – and thank you, Allan for that introduction (*Allan Friedman, Research Director, Center for Technology Innovation @ Brookings*)
- I’d like to thank the Brookings Institution, and its Center for Technology Innovation, for inviting me to address what President Obama’s signing of the *America Invents Act*, two weeks ago today, means for American innovation, American jobs, and American leadership.
- And I’m glad to see that so many of you took the time out of your schedules to participate in today’s discussion. Having spent most of my professional career in the intellectual property (IP) field, I’ll be the first to admit that patents haven’t always been the *sexiest* of topics.
- But, even if the brand new patent reform law isn’t enough to make IP the subject of dinner table conversation everywhere...take a moment and notice what’s around you, even in this auditorium.
 - The microprocessors in the cameras filming today’s event; the microphone you’ll ask your questions from; the components in the smart phones some

of you are Tweeting from at the moment; even the name “the Brookings Institution”— they are all built from patented technologies and trademarked brands that sought protection at the United States Patent and Trademark Office.

- So no longer is intellectual property a topic reserved for highly technical or specialized scientific and legal circles. IP now permeates **all** fields of interest, **all** layers of society and **all** parts of our daily lives.

THE GRAND BARGAIN AND WHY PATENTS MATTER

- And as we bear witness to the awe-inspiring progress of technology—at a pace never before seen in any previous generation—protecting those technologies with clear, consistent and dependable patent rights is fundamental to disseminating scientific know-how—affording society the opportunity to build upon and advance from one breakthrough to the next.
- The cardinal prominence of the “patent” right was codified into law by our founding fathers: who while drafting the Constitution deemed it essential for society to promote the progress of science and the useful arts by granting inventors the exclusive rights to their discoveries for limited periods of time.
- The grand bargain embodied in this system is a bargain between thinkers, researchers, technologists, visionaries, scientists—and the rest of society. It’s a bargain providing incentives to innovate, in exchange for dedicating those

innovations to the corpus of human knowledge, and to the benefit of all mankind in perpetuity.

- Not a bad deal for mankind.
- By disclosing the knowledge behind an invention, for all the world to build upon, each generation stands on the platform created by the previous generation, **leveraging yesterday's inventions to develop tomorrow's innovation.**
- So, you've got to hand it to those who conceived of and included Article 1, Section 8 in the Constitution, for having the foresight in **1787** to develop a social contract for the world's only inexhaustible resource—human creativity. Without it, we may very well still be using slate & chalk.
- Without the incentives offered by patent protection, there would be little motivation for anyone to share their new idea for the laser or the microprocessor, with the rest of the world. And arguably, plenty of incentives *not* to share.
- The laser alone has spawned whole industries, through multiple uses and multiple follow-on breakthroughs. And as if gazing into the far depths of our galaxy or correcting visual impairments via laser was not enough, follow-on advancement of technologies like the laser continue to create high-growth job sectors, to this day.
- So with their experimental drive, curiosity, and foresight—our founding fathers left a legacy so profound...that our faith in **the transformative power of American inventiveness has become almost a genetic pre-disposition.**

- A genetic optimism that has infused our nation’s culture with an ethos that invention & experimentation **will** see us through the toughest roads ahead; that innovation **will grow** the next great industries and promote the next wave of jobs; that innovation, even in the face of failure, will provide us with a greater understanding of the world around us; and indeed that innovation **will underwrite** the next great chapter of 21st century growth for our country.

SOUND IP POLICY AND INNOVATION

- That’s **exactly** why the *America Invents Act* is a historic moment for our nation. Because in the centuries since the first patent examiner—Thomas Jefferson—reviewed and granted the first U.S. patent, our nation has observed sweeping revolutions in the **pace** of innovation—but with *no* comprehensive legislative adjustment in patent policy.
- By building out the world’s only 21st century Patent and Trademark Office, equipped to manage the demands of a globalized economy, this new law enables a better resourced USPTO to grant IP rights with greater speed, greater quality and greater clarity. It also **advances** the President’s overall strategy of deploying American innovation to build businesses and build jobs.
- By cutting costs for independent inventors and entrepreneurs, issuing patents that obviate expensive court challenges, and by providing tools to reach patent decisions three-times faster than in the past, the new law **topples** many existing structural impediments to business & technological growth.

- With greater efficiency built into the American IP system, investors have greater confidence in the American patent. **For investors**, patents are strong indicators of market potential for new companies. And **for inventors**, patents are essential to attracting the capital necessary to develop their products. So by allowing early-stage startups, independent inventors, and even larger companies to **effectively** acquire that capital, our newly reformed patent system is in turn enabling innovators to develop their technologies **faster**, hire employees **sooner**, grow their businesses to be **stronger**, and sell their products more **widely**.
- This historic new patent law is therefore a down payment on the aggressive jobs agenda President Obama has outlined in the *American Jobs Act*. By shrinking the gap between ideation and the bottom line, companies are able to leverage the resources required to move molecules to the marketplace, spurring the sort of business and economic growth necessary to out-innovate our economic competitors in Brazil, Russia, India and China.
 - Ultimately this ensures that new jobs and new industries take root in this nation, and not somewhere else.
- One of the areas where we've seen strong linkage to competitiveness and economic strength, and a direct correlation to employment opportunity, is in IP intensive industries. These are sectors where great ideas born in a lab, a garage, or a dorm room have blossomed into Fortune 500 companies, because they've had the strength of the US Patent behind them to build out the far-reaching products and services that benefit communities and the economy generally.

- But **sound IP** policy—the kind embodied in the *America Invents Act*--doesn't just embolden the American manufacturing sector, or inspire new innovative possibilities—as if that's not enough for 1 piece of bipartisan business legislation—it also helps American innovators **compete** by offering clear, timely and *enforceable* rights.

SOUND IP POLICY AND MARKET FORCES

- In a world where the corruption can so readily steal, mimic and distribute products as if they were their own—clarity and consistency in patent rights help American businesses better protect their IP from theft and give them a fighting chance to compete on a level playing field. Now none of us needs a lecture on the sinister competitive impact of counterfeiting and piracy. But below the surface there is an equally insidious impact on national competitiveness.
 - Because the copyists enjoy “free” access to others’ property, their operating costs are reduced compared to legitimate U.S. businesses that pay for access to others’ property, or that they develop on their own. It shouldn't be surprising that these rogue “competitors” have a marketplace advantage over US competitors. **Cheaters cheat for a reason.**
 - And the costs exacted to cope with this unfair cheater's advantage don't just shrink revenues, they inhibit product development for companies, they stunt a business's hiring potential, they risk irreparable damage to a brand and in sum—they ultimately stymie broader economic growth nationally.

PILLARS OF THE AIA

- What the AIA does is ensure that entrepreneurs, innovators and businesses of all sizes have the best tools available to protect their market participation in a hypercompetitive & often ruthless global economy. And provisions in the new law that promote such sound IP policy are governed by three principal pillars: speed, quality and clarity.
- Speed in the patent application review process is paramount for inventors to get their businesses off the ground; but the USPTO also places a premium on ensuring that only high quality patents are granted.
- A commitment to the pillar of quality moves our Patent Office to tighter patenting standards, helping cutting-edge products reach the marketplace—while allowing manufacturers to do business without the threat cause by improvident patents. Finally, clarity in what exactly is covered under a patent, and for whom, moves the patent system away from constant challenges caught in the dockets of district courts, to mutual respect and accountability for innovators, manufacturers and the public.

PROVISIONS OF THE AIA

- So let's talk about how specific provisions of the new law meet these 3 standards and gives the US the world's first and only 21st century patent system.

- For the first time, the USPTO will have the ability to set its fees to recover the actual costs of the services it provides. And for the first time, the law helps the USPTO access all the fees it collects. And before the ink of the President's signature was even dry, we began aggressively implementing this mandate by hiring new examiners, instituting new processes, and modernizing our IT infrastructure.
- While in these tough economic times, our funding model is still not perfect, we appreciate the strong and continuing support of Members of Congress and our stakeholders, to ensure that the USPTO retains the funding it needs to implement this legislation and accompanying core programs.
- To alleviate an average wait time of almost three years for patent protection, we have already begun offering inventors an opportunity to have important patents reviewed in one-third the time – with a new fast track option that guarantees a 12-month turnaround. The Track 1 prioritized examination provisions allow the USPTO to move with urgency when needed and bring the sort of patented American ingenuity—that will define the next era of our nation's growth—to the marketplace even faster.
- This legislation also enables us to bring online the additional resources needed to help us further combat the backlog of patent applications, which represent an untold number of jobs and innovations idling in the pipeline. Under the Obama Administration, the patent backlog has been reduced from over 750,000 patent applications to **less** than 680,000, despite a 4% increase in filings. But additional resources provided in the law are allowing us to push that number down even

further, and even faster—unclogging the backlog and regaining jobs lost in the recession.

- The law also establishes a new in-house review process for challenging granted patents—a process that is much faster and cheaper than litigation. By resolving disputes about patent rights earlier, more efficiently, and at lower cost, we will add **greater certainty to**—and cultivate **greater confidence in**—the American patent system.
- That confidence, in turn, will invite more companies to do business in the United States, and will inspire individuals to work towards the next great medical and nano-tech breakthroughs that will sustain America’s visionary leadership for decades to come.
- The AIA also promotes a system of clearer and more enforceable patent rights by adopting a First to File standard for patent priority. By transitioning to a simpler, more objective, and more transparent system for determining patent priority, the new Act helps ensure that independent inventors and small entities have greater access as to their rightful claims to patents and are able to navigate the patent system on a more equitable footing with larger enterprises.
- And let me be clear. Independent inventors and small businesses play a critical role in driving innovation in the U.S., createing 2 out of every 3 new jobs in our country. That’s why this new system was specifically designed to better protect them, by offering small businesses a more reliable way of filing that can better withstand challenges from competitors, and at reduced costs.

- In the past, inventors have been lulled into a false sense of security that they could prove themselves the first to invent. But when the inevitable challenge comes, small businesses have found themselves outgunned in complex and costly legal procedures, struggling to assemble the arcane evidence, spending half-a-million dollars or more trying to prove they were the rightful inventor—and still losing in the vast majority of cases.
- By instead pegging our patent system to a clear, objective, transparent and simple timeline, these inventors are better equipped to protect their technologies and businesses.
- Now, while **speed** and **certainty** are essential to a well-functioning US Patent & Trademark Office, patent **quality** is the *sine qua non* of any fit-for-purpose patent system and we are deeply committed to ensuring improved patent quality under the AIA.
- With the new law, the US will enjoy objective standards for assessing patentability—standards easily applied by examiners and applicants alike. And of course the foundation for quality is always built on clear, objective and simple standards. The new law also permits 3rd party submissions of prior art, a term we in the IP community use to reference technologies already known to the public. In the era of tools like Wikipedia, allowing the USPTO to harness the internet and crowd-source the search for additional prior art helps patent examiners widen the scope of their review and offers applicants heightened confidence in the validity of their patents once issued.

- Moreover the previously mentioned ability to challenge patents in-house, through a cost-effective review processes, adds yet another check and backstop on the quality of issued patents.

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- The sheer tonnage of these provisions will certainly be a challenge to implement, but as we stand at the forefront of a new era in American innovation, I submit to you today that the United States Patent and Trademark Office is up to the challenge. In its totality, the *America Invent's Act* fosters a nimble and strong IP infrastructure for our country, allowing businesses to grow and technologies to flourish, by leveraging inventive efforts with the fulcrum of a U.S. patent—the primary currency of innovation in this 21st century.

IMPLEMENTING & NEXT STEPS

- Our new law in the US is anchored in the desire to more effectively match the rate & pace of the patenting process to the rate & pace of invention, and the rate & pace of commercialization. But in saying this we realize that there is a difference between invention and innovation—**the latter is the economically relevant version of the former**. With this distinction in mind, the *America Invent's Act* creates not just the simplest patent system, or the most precise patent system, but rather the most innovation-friendly & inventor-friendly patent system that reduces costs, levels the playing field for businesses small & large, and spurs economic growth.

- And the story of invention-based growth is being documented day by day, by patent filers everywhere.
 - It's the story of Calera, a carbon-capture company in Los Gatos, California that is fast tracking their patenting of green technologies through the USPTO, and devising energy efficient tools to allow our planet to breathe easier.
 - And it's also the story of Uncharted Play, in upstate New York, which patented the idea of a soccer ball that generates electricity when you kick it. And with the power of that patent, the “**Soccket**” is now supplying power for electrical appliances and lighting up parts of the developing world with no established electrical grid.
- And while as the Director of the Patent and Trademark Office, I see this new law as a “Jeffersonian moment” for our nation's patent architecture—I'd also submit that it's about more than that. It's about the opportunity for us as a people to leverage technology in tackling the most daunting challenges of our time. It's about inspiring a 6th grader in science class to build a better world; it's about discovering better ways to interact with the world; and it's about developing new cures for diseases in this world.
- Creativity and invention are at the **heart** of human progress. And patents are a key part of how we generate value from creativity—how we move invention to the marketplace.

- By working to reengineer, from the ground up, the process of securing IP rights, patent reform will allow inventors to move their ideas to the market place more effectively and the entire innovation value chain to function more effectively.
- The process of implementing this law will span the course of the next 18 months to 2 years. But as we develop a system of rules to implement the new provisions of this law, your input will be vital. We've already convened working groups under the leadership of a chief implementation coordinator, and we've already started reaching out for help. We recognize that the USPTO cannot simply implement this law singlehandedly. The US innovation community must implement our country's new patent law **together**.
- www.uspto.gov/americaninventsact
- Through judicious rule-making, thoughtful guidelines and policy-based interpretations of the new laws in the courts, we can animate the new law with the **balance & stability** that is elemental to strong business growth.
- And **when we get this right**, our new patent laws will streamline processes that optimize patent quality and minimize barriers to research, development and growth that have plagued small businesses in this economic climate, for far too long.

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- We live in a world where information and commerce reach far beyond any of our borders, and innovators are constantly seeking to tap markets abroad. Our new patent law speaks to this imperative as well. It offers **inventors here in the US the opportunity to obtain reliable** patent rights in multiple jurisdictions, cost-effectively. Moreover, by adopting a patent infrastructure that is more in synch with the rest of the world, we've sent the message that patent reform in the U.S. is both about ensuring inventors can compete on the global stage, and a **broader assertion of American leadership**.
 - A cooperative effort with our global trading partners, showing the way to a 21st century global patent system and helping both developed and developing countries move toward it.
- With our IP systems so varied—innovators and patent offices around the world have to repeat the same work, time and time again—countless times per year at different patent offices—ultimately wasting billions of dollars, and clogging the patent pendency pipeline, while devaluing patents as the currency of innovation.
 - The stress on our systems not only stifles our operational ability as we stare at alarming patent backlogs, it also impedes our ability to grow new jobs, compete in burgeoning markets, and fertilize new products and services that address marketplace needs.
- To devise solutions that address these stresses head on—we must collaborate. And to truly enable the global innovation system to flourish, we must take concrete steps to harmonize our substantive patent laws. Greater harmonization

is essential to the efficient functioning of our respective patent systems, and bears the potential to unleash jobs—driving real growth for all of our economies.

- While these efforts have been advancing in earnest over the past several months, including this week at the World Intellectual Property Organization General Assemblies in Geneva, global IP harmony won't happen overnight.
- And while that will take much discussion and negotiation among the varied perspectives of each nation—they all begin with a desire we all clearly share across national IP authorities: a desire for a more nimble and agile innovation architecture. One that quickly delivers new technologies to the market place; accounts for shifting trends in the sciences; and yields clear, consistent and reliable patent rights.
- We live in an age where technological change occurs in the blink of an eye. Our new law patent law offers inventors a USPTO capable of adapting to changes. This new law not only boosts confidence in the US patent, it also boosts inventor willingness to take the risks involved in turning dreams into reality—design them, build on them and map uncharted industries with them.
- **We are a nation of big ideas.** Larger than life ideas. We are a nation that wakes up and says: “I might not have a lot of money, but I have a vision for a great new idea that will help others. I might not know exactly how to get this product off the ground, but I’m going to try.”
- We do big things.

- And today, more than two centuries after Thomas Jefferson examined that first patent, turning great American ideas into **great American businesses has gotten the upgrade of the century.**
- And I'm thrilled to be here, now, to help Americans make the most of the America Invents Act.
- Thank you

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